

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'सी', मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES, 'C' MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री राजेश कुमार, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and  
Shri Rajesh Kumar, Accountant Member**

**ITA No.5624/Mum/2014  
Assessment Year: 2011-12**

DCIT, Central Circle-10, Room No.802, 8 <sup>th</sup> Floor, Old. CGO Annexe Bldg. M.K. Road, Mumbai-400020	<b>बनाम/</b> Vs.	M/s Percy Sorabji Chowdhry, 1501 A, Rushtomjee Regency, Rustomjee, Acres, J.S. Road, Dahisar (W), Mumbai-400068
(राजस्व /Revenue)		(निर्धारिती /Assessee)
<b>PAN. No.AAFPC4467Q</b>		

राजस्व की ओर से / Revenue by	Shri Rajat Mittal-DR
निर्धारिती की ओर से / Assessee by	Ms. Nirmala Solanki

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>08/12/2016</b>
<b>आदेश की तारीख /Date of Order:</b>	<b>21/12/2016</b>

**आदेश / O R D E R**

Per Joginder Singh (Judicial Member)

The Revenue is aggrieved by the impugned order dated 23/06/2014 of the Ld. First Appellate Authority, Mumbai,

deleting the addition of Rs.99,09,932/- made u/s 69A of the Income Tax Act, 1961 (hereinafter the Act) by the Assessing Officer holding that the excess cash found from the residence of the assessee represents receipt on sale of flat, car parking, transfer fee, scraps sales etc and the same has been offered in the return of income of Keystone Realtors Pvt. Ltd. for Assessment Year 2011-12, without appreciating the fact that the assessee has not furnished any evidence establishing the nexus between the excess cash found from the residence with income offer to tax in the return of income of Keystone Realtors Pvt. Ltd.

2. During hearing, Shri Rajat Mittal, ld. DR, advanced arguments, which is identical to the ground raised, by defending the addition made in the assessment order. On the other hand, Ms. Nirmala Solanki, Ld. counsel for the assessee defended the impugned order by placing reliance upon the factual finding recorded by the Ld. Commissioner of Income Tax (Appeal).

2.1. We have considered the rival submissions and perused the material available on record. We find that a search and seizure action u/s 132(1) of the Act was carried out in the case of Rustomjee Evershine Group on 21/10/2010. The case of the assessee was also covered in the search. The assessee filed return on 28/11/2011 for Assessment Year 2011-12, declaring income at Rs.1,51,31,475/- and the consequent assessment was completed vide order dated 21/03/2013, u/s 143(3) of the

Act at income of Rs.2,50,41,410/-, adding the cash seized from the residential premises of the assessee, amounting to Rs.99,14,550/-.

2.2. On appeal before the Ld. Commissioner of Income Tax (Appeal), the submissions made before the ld. Assessing Officer as well as before the First Appellate Authority were considered along with the statement recorded from Shri Boman Irani and finally, the addition was deleted. The Revenue is aggrieved and is in appeal before this Tribunal.

2.3. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsel, if kept in juxtaposition and analyzed, we find that there is uncontroverted finding in the impugned order that during course of search, post-search investigations and also during assessment proceedings, no independent source of income, with respect to the present assessee, was found and the only source of income was from M/s Keystone Realtors Pvt. Ltd., in whose hands undisclosed income was disclosed in the return filed for Assessment Year 2011-12 that to as per the income admitted in the statement recorded from Shri Boman Irani. Even the amount of Rs.16,03,203/- was found with respect to cash balance, as per books of accounts of the company against which physical cash was Rs.21,91,800/-. In reply to question no. 15, during recording of statement, on 21/10/2010, Shri Boman Irani stated that the balance must

be with the directors and will be reconciled with the cash balance. So far as, the excess cash is concerned, which was found from the company and directors was explained to be on account of operation activities i.e. cash receipt on sale of flat, scrap sales, transfer fees, car parking and other revenue related matters, which was offered in the return of income of M/s Keystone Realtors Pvt. Ltd. for Assessment Year 2011-12. It is also noted that no show-cause notice was issued to the assessee before making the addition. This factual matrix was also opined to be correct by the Ld. Commissioner of Income Tax (Appeal) and not controverted by the Revenue. It seems that the addition was mere based upon the statement recorded by the Department. Considering the totality of facts and uncontroverted finding recorded in the impugned order, we find no infirmity in the conclusion drawn by the First Appellate Authority, therefore, we affirm the same, resulting into dismissal of appeal of the Revenue.

Finally, the appeal of the Revenue is dismissed.

This order was pronounced in the open court in the presence of the ld. representative from both sides at the conclusion of the hearing on 08/12/2016.

Sd/-

(Rajesh Kumar)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 21/12/2016

*Shekhar, P.S./नि.स.*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**